



PLANNING COMMISSION MEETING STAFF REPORT FEBRUARY 9, 2006

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| Project: | BAYSIDE BUSINESS DEVELOPMENT AGREEMENT EXTENSION-(PLN2006-00058) |
| Proposal: | To consider recommendation of an Ordinance to allow a time extension of Development Agreement DA-92-1. |
| Recommendation: | Recommend to City Council |
| Location: | The project is generally located on the west side of Interstate 880, north of Dixon Landing Road, south of the current Fremont Boulevard terminus in the Industrial planning area. APNs: 519-0820-002-14, 519-0820-002-18 (See aerial photo next page) |
| Area: | 159 acres |
| People: | Bud Lyons, King & Lyons, Developer Michael Weed, Counsel of Developer Steve Reynolds, Engineering Consultant King & Lyons, Owner Clifford Nguyen, Staff Planner (510) 494-4769; cnguyen@ci.fremont.ca.us |
| Environmental Review: | An Addendum to the Approved EIR has been prepared. |
| General Plan: | Restricted Industrial (Commercial/Industrial Overlay); Open Space; and, Foot and Bicycle Trails |
| Zoning: | I-R, Restricted Industrial; O-S, Open Space |

EXECUTIVE SUMMARY:

The developer, King & Lyons, is proposing an extension of Development Agreement DA-92-1. The project site encompasses 159-acres: approximately 90-acres for the restoration and preservation of wetland and 59-acres of land proposed for development (9 industrial lots and extension of Fremont Boulevard). The proposed development of the project site included advanced wetland mitigation to better ensure protection and preservation of the wetland habitat, wildlife and plants, including a listed endangered species, the salt marsh harvest mouse (SMHM). The proposed time extension of the Development Agreement will allow the developer additional time to complete the advanced wetland mitigation and project as proposed. In light of the City's recently adopted September 2005 Bicycle Master Plan, the developer also proposes to grant an irrevocable offer for a pedestrian and bike trail for public use along Coyote Creek. Staff recommends that the Planning Commission recommend a 4-year extension of the Development Agreement ("proposed project") and accompanying environmental document to the City Council for approval.



Figure 1: Aerial Photo (2002) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: Industrial
- South: Commercial/Office (Milpitas)
- East: Industrial
- West: Wetlands/Landfill/Bay

BACKGROUND AND PREVIOUS ACTIONS:

1994 Project Approvals

In March 1994, on the recommendation of the Planning Commission, the City Council approved an Environmental Impact Report (EIR-89-56), Rezoning (Z-89-8), a Vesting Tentative Tract Map (Tract 6591), a Preliminary Grading Plan (GP-92-11), and a 12-year Development Agreement (DA-92-1) for the 159-acre project site, commonly known as Bayside Business Park II. The approved project designated 90 acres adjacent to Coyote Creek and the existing Wildlife Refuge as wetlands, and included a Mitigation Monitoring Plan prepared by Zenter and Zenter in 1992 (revised in 1998) that would restore the lower wetlands area while providing some raised areas for protection of the salt marsh harvest mouse habitat. The remaining 59 acres of upland area was approved for nine developable lots (adjacent to Interstate 880), and a right-of-way and complete improvements for extension of Fremont Boulevard to Dixon Landing Road.

The Development Agreement (DA-92-1) provided the developer with assurances for a 12-year duration (expires on March 1, 2006) that the project may proceed as originally approved, and not be affected by future changes in City-related land use regulations. In exchange for this assurance, the developer agreed to certain City interests that were also contained in the DA (see "Development Agreement" below). The 1994 approved project is summarized below:

1. Phase 1, now virtually complete, consists of wetland restoration and enhancement work and the excavation and fill needed to rough grade the first five lots (Lots 1-5).
2. Phase 2 includes the rough grading for the remaining four lots (Lots 6-9), a box culvert across Scott Creek, and certain wetland and drainage improvements. Work on Phase 2 will not occur until (5) specific performance standards are met in the restored and enhanced marshes of Phase 1.
3. Phase 3 involves construction of the final wetland design and construction of Fremont Boulevard and that portion of Dixon Landing Road not constructed in connection with the Dixon Landing interchange.

Over the course of several years, the developer worked with Federal and State Agencies to obtain environmental permits related to proposed wetland fills and Wetland Mitigation Plan. The agencies included the Corps of Engineers (Corps), the US Fish and Wildlife Service (USFWS), the Regional Water Quality Control Board (RWQCB), the Bay Conservation and Development Commission (BCDC) and the State Department of Fish and Game (DFG). The agencies worked with the project developer on refinements to the City-approved 1992 Wetland Mitigation Plan and subsequently agreed upon changes, resulting in less fill of wetlands and reduced long-term maintenance.

In August 2000, based on recommendations and permit approvals from the agencies, most notably the USFWS and Corps, project refinements were proposed and approved by the Planning Commission to achieve no net loss of wetland habitat. Accordingly, the Preliminary Grading Permit (PGP), GP-92-11, and 1992 Mitigation Monitoring Plan (1992 MMP) were revised to implement these refinements. The revised PGP (PLN2000-00167) and MMP (1998 MMP) were determined to cause no new impacts or significant effects on the environment.

In February 2005, the Planning Commission approved a second revision to the Preliminary Grading Plan to permit the short-term surcharging (stockpiling) of soil, resulting in the temporary increase in the pad elevations on Lots 1 through 5. The stockpiled soil will eventually be used to elevate Lots 6 through 9 once the wetland mitigation program is completed in Phase I.

Since the commencement of the project's development, annual monitoring of the wetland restoration process was conducted, including annual Planning Commission reviews of the project's conformity to the Development Agreement. At each annual review (years 2000-2005), the developer was found to be in compliance with the provisions of the Development Agreement.

DEVELOPMENT AGREEMENT DA-92-1 (MARCH 1994)

On March 1, 1994, a 12-year Development Agreement (DA-92-1) between the City and the project developer was executed. The Development Agreement is set to expire on March 1, 2006. The agreement identifies the 159-acre project site and identifies the project as being in accordance with: Vesting Tentative Tract Map 6591(research & development-type office park); advanced wetland mitigation to protect special habitat; extension of Fremont Boulevard to Dixon Landing Road; and construction of levee improvements. The original development agreement incorporates the following development approvals:

- (1) General Plan land use designation of Restricted Industrial and Open Space
- (2) Zoning designation of Restricted Industrial (I-R) as to a portion, Open Space (O-S) as to a portion, Flood Combining (F) as to a portion;
- (3) Vesting Tentative Tract Map 6591;
- (4) Environmental Impact Report for Bayside Business Park, certified as complete on February 22, 1994; and
- (5) Grading Plan GP-92-11.

The table below illustrates the original Development Agreement rationale, including the project's current compliance with each interest:

| March 1994 Development Agreement (DA-92-1) | |
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| City Interest | Developer's Action/Status |
| A. Need for construction of a levee along the westerly perimeter of the development portion of the property and Interstate 880, just easterly of the project site [to protect an endangered species on site (salt marsh harvest mouse)]; | In August 2000, the Planning Commission approved an elimination of the previously proposed levee along the westerly perimeter of the development per the recommendations of the U.S. Fish and Wildlife Service and Corps of Engineers to ensure no net loss of wetland area. |
| B. City interest in mitigating the impacts on wetlands in advance of development; | Progress continues, showing optimistic improvements to the wetland area and salt marsh harvest mouse (SMHM) population numbers; according to the latest monitoring report, 4 of the 5 performance standards have been met for Phase II of the development. |

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| C. Potential for public cost savings in construction of Interstate 880/Dixon Landing Road interchange if development of the site commences before construction of the interchange; | Interchange constructed—no longer applicable. |
| D. Early construction of the project will provide a second access to I-880 for the southern industrial area, westerly of I-880; | Upon full compliance with the wetland mitigation plan performance standards, the development of Fremont Boulevard extension should commence. |
| E. Providing an alternative parallel route for I-880 to State Route 237 when McCarthy Boulevard is extended south by the City of Milpitas; | This is possible once Fremont Boulevard is extended (including construction of the bridges over Scott Creek and the flood control channel). |
| F. Potential for purchase of Lot 1 at the northeasterly corner of the project site for use as an off-site mitigation area for wetland impacts at Dixon Landing interchange; and, | City's option to purchase land expired 12/31/1998—developer obligation met. |
| G. Economic benefits of increased employment near the freeway interchange. | The construction of the prime industrial area will provide these benefits. |

Except for the aforementioned project amendments, the development approvals remain substantially unchanged. While some City interests are no longer applicable (A, C and F), some interests have not been fully met. This is largely due to the timing provisions embedded in the Development Agreement that require the developer to comply with specific wetland mitigation performance standards prior to development. Based on the latest monitoring report (fourth for year 2005), the mitigation area is reported as doing quite well: the cover of native halophytic vegetation and pickleweed have met the performance standards and the salt marsh harvest mouse (SMHM) population numbers are also significantly higher than that of the project's start. The report identifies that four of the five performance standards have been met. Staff believes that full compliance with the performance standards will be ultimately achieved.

PROJECT DESCRIPTION:

The developer proposes a time extension to Development Agreement DA-92-1 (DA). The developer indicates that extension is needed because the development and implementation of the wetland mitigation plan took over several years and has consumed the entire 12-year term of the DA. A considerable amount of effort and expense has incurred by the developer, and thus a 4-year extension is proposed. No other major changes/requests are made. The original DA is enclosed (Informational 1: DA-92-1). Staff recommends a 4-year extension of the DA. In exchange for this 4-year extension, the City receives (a) continued assurance that the project will be completed as proposed; and (b) an additional benefit of an irrevocable offer of a pedestrian and bike easement on, or within the vicinity of, the levee road adjacent to "Coyote Creek", and along the Alameda County Flood Control Channel levee ("Flood Channel B"), as generally shown in Figure 2-4 of the adopted September 2005 Fremont Bicycle Master Plan for Class I trail (Informational 5).

PROJECT ANALYSIS:

Development Agreement/City Interests

The general intent of a development agreement is to strengthen the public planning process; encourage private participation in the comprehensive planning; and, reduce the economic costs of development. It is a tool for establishing a vested right to proceed with development in conformance with the policies, rules, and regulations in effect at the time of approval. A development agreement provides a developer with assurances for a specified length of time that his/her project may proceed as originally approved, and not be affected by future changes in land use regulations. In many cases, and in exchange for this assurance, the developer (usually landowner) agrees to certain City interests for public use as a condition of the agreement.

Staff is supportive of the proposed 4-year extension, amending DA-92-1 as shown on Exhibit "A". The developer has shown good faith in satisfying existing provisions in the original agreement, and has advanced wetland mitigation to restore (and subsequently preserve) marshland, as well as the increase in the salt marsh harvest mouse population numbers. Due to the environmental challenges associated with developing a multi-agency approved wetland mitigation plan, some time has been needed to reach compliance with the wetland mitigation plan performance standards. Such standards must be fully met before the second and third phases of development (e.g., extending Fremont Boulevard and construction of structures) is permitted to occur (or acceptance of a final map by the City Council). A time extension of DA-92-1 for a period of 4-year allows the developer to meet the performance standards for phase II of the project; prepare a long-term wetland management and maintenance program (of no less than 50 years); and, fully complete the development as anticipated. In addition, a new benefit would be provided the City, as follows:

In September 2005, the City Council adopted the Bicycle Master Plan, which proposed two trail alignments (Class I: a non-motorized, exclusive path) through the project site: one trail is located west of the future Fremont Boulevard extension; the second trail alignment is located on, or within the vicinity of, the levee road adjacent to "Coyote Creek" and the Alameda County Flood Control Channel levee ("Flood Channel B"). During the development of the Bicycle Master Plan, the public ranked these trails as high priority. While the 1994 project approvals require the construction of the trail alignment along the future Fremont Boulevard extension, no requirement was established for the construction of the second alignment along the Coyote Creek (closer to the bay). With an irrevocable offer for a pedestrian and bike easement along Coyote Creek in the western portion of the project site, the City could evaluate the feasibility of a second trail alignment. Staff recommends that the Planning Commission support this proposal.

On this basis, staff recommends the proposed 4-year extension and concludes that the benefits (under the original agreement and proposed amendment) to the City justify the approval which would guarantee the developer's rights on this project site for another 4 years.

General Plan Conformance:

The existing General Plan land use designation for the project site is Restricted Industrial (approximately 70 acres) and Open Space (approximately 90 acres). The proposed project essentially implements the General Plan by attaining important economic, social, environmental and planning goals of the City. The extension of Fremont Boulevard through the project site; construction of pedestrian and bicycle trails implement the Transportation objective and goals; providing a prime industrial area for

development with the creation of new job opportunities and the potential for the City to increase its tax base, implements Land Use objective and goals; and, helping mitigate potentially significant environmental impacts (i.e., on wetlands), implements the Natural Resources objectives and goals.

Zoning Regulations: Consistent with State law (§65864 *et seq.*), Chapter 7, Title 8 of the Fremont Municipal Code (FMC), contains provisions that establish procedures and requirements for consideration of a development agreement. Staff finds that the terms of the agreement comply with these standards.

Environmental Review: An Addendum (Exhibit 2) to Final Environmental Impact Report EIA-89-56 (SCH#89030071—Informational 2) has been prepared and is recommended for the proposed project (PLN2006-00058). Approval of the proposed project, a Development Agreement extension, results in none of the conditions contained in CEQA Section 15162 calling for preparation of a subsequent EIR. The previously adopted mitigation plan (Informational 3, revised in 1998) adequately addresses the project impacts that are identified and can be mitigated. A more detailed description of the mitigation measures and program can be found in the Wetland Mitigation Plan (Zentner & Zentner, April 30, 1998), which can be viewed at the Community Development Department, Planning Division, 39550 Liberty Street, Fremont. All previously approved mitigation measures and conditions of approval will remain in effect. With the implementation of, and compliance with, the previously adopted mitigation plan and project approvals, staff believes the proposed Development Agreement extension would not create any of the conditions that require a subsequent or supplemental EIR.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 26 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on January 27, 2006. A Public Hearing Notice was published by The Argus on January 26, 2006.

In addition, 5 public hearing notices were mailed as a courtesy to interested parties, including the US Fish and Wildlife Service, Corps of Engineers, California Dept. of Fish and Game, Regional Water Quality Control Board and Tri-City Ecology Center.

Any comments or concerns received will be forwarded to the Planning Commission.

ENCLOSURES:

Exhibit:

Exhibit "A" 2006 Addendum to EIR-89-56

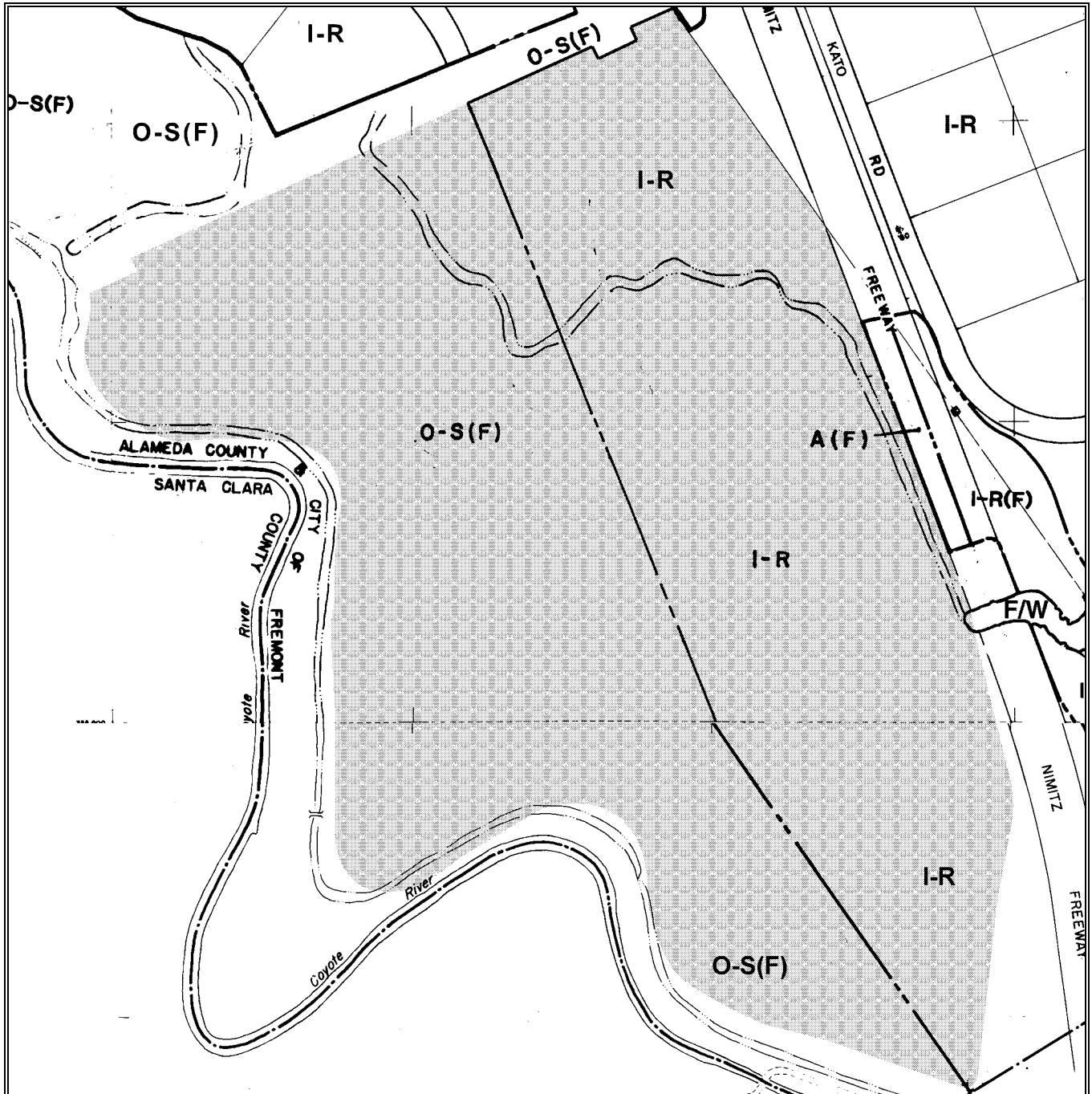
Informational Items:

1. Development Agreement DA-92-1 (March 1, 1994)
2. EIR-89-56
3. 1998 Adopted Mitigation Monitoring Program
4. Vesting Tentative Tract Map 6591
5. September 2005 Fremont Bicycle Master Plan, Figure 2-4

RECOMMENDATION:

1. Hold public hearing.
2. Find the proposed project (PLN2006-00058) is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use, Open Space, and Natural Resource Chapters.
3. Find the proposed project (PLN2006-00058) is in compliance with the applicable requirements as set forth in the Fremont Municipal Code.
4. Find that an Addendum to Final Environmental Impact Report 89-56 (SCH#89030071) is appropriate for the proposed project PLN2006-00058 in that the proposed time extension and amendments to Development Agreement DA-92-1 results in none of the conditions contained in CEQA Section 15162 (i.e. substantial project changes or new information or new significant effects) calling for preparation of a subsequent EIR.
5. Find Final Environmental Impact Report 89-56 (SCH#89030071) and its Addendum have been completed in compliance with the provisions set forth in the California Environmental Quality Act, and are adequate for PLN2006-00058, as proposed, having been reviewed and considered for recommendation by the City of Fremont Planning Commission.
6. Recommend the City Council adopt the 2006 Addendum to EIR-89-56 (Exhibit "A") and find these actions reflect the independent judgment of the City of Fremont.
7. Recommend the City Council waive full reading and introduce an ordinance for an amendment to the Development Agreement DA-92-1 allowing for a 4-year extension.

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

